

**Before the
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of a 1992 Timber Wolf
Trailer, VIN 48FCG302XN1000296,
Purchased by William Gaulette and Chris
Ducklow

Case No.: 97-H-1068

FINAL DECISION

By letter dated December 15, 1997, William Gaulette and Chris Ducklow requested a hearing to review the Department of Transportation's refusal to issue a title to them for the above-captioned vehicle. Pursuant to due notice a hearing was held on February 3, 1998, in Madison, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the parties to this proceeding are certified as follows:

William Gaulette and Chris Ducklow
2827-3 Century Harbor Road
Middleton, WI 53562

Wisconsin Department of Transportation, by

Attorney Charles M. Kernats
Office of General Counsel
PO Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a proposed decision in this matter on March 2, 1998. No comments on the proposed decision were received. The proposed decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. In June, 1996, William Gaulette and Chris Ducklow contracted to purchase a 1992 Timber Wolf Trailer, VIN 48FCG302XN1000296, from Capitol Corvette. Mr. Gaulette and Mr. Ducklow paid \$3,741, including sales tax, title and registration fees, for the trailer. William Gaulette and Chris Ducklow took possession of the trailer at the time of purchase and retained possession of the vehicle as of the date of the hearing in this matter.

2. In June, 1996, Capitol Corvette was a motor vehicle dealer conducting business at 5400 King James Way, Madison, Wisconsin, 53719. Capitol Corvette was in the business of selling used motor vehicles. Capitol Corvette was a sole proprietorship and held motor vehicle dealer license number 1047. David C. Larson was the owner and sole proprietor of Capitol Corvette. On December 9, 1996, the Division of Hearings and Appeals issued an order revoking Capitol Corvette's motor vehicle dealer license (Docket Nos. 96-H-986 and 96-H-993).
3. The Division of Motor Vehicles of the Department of Transportation (DMV) is part of an agency of the State of Wisconsin and is authorized under sec. 218.01, Stats., to license, inspect, and regulate motor vehicle dealers in Wisconsin. DMV also has the authority under chapters 341 and 342, Stats., to issue titles and registration for motor vehicles in Wisconsin.
4. The trailer purchased by William Gaulette and Chris Ducklow was owned by Kirk Trainor. Mr. Trainor had entered into a verbal consignment agreement with Capitol Corvette to sell the trailer. Capitol Corvette failed to pay Mr. Trainor the purchase price for the trailer.
5. By application dated June 7, 1996, William Gaulette and Chris Ducklow applied to the DMV for Wisconsin title and registration for the trailer. Because of conflicting ownership claims, the DMV refused to issue a title or registration for the trailer to William Gaulette and Chris Ducklow.
6. When William Gaulette and Chris Ducklow purchased the trailer from Capitol Corvette, they were not aware that it was owned by Kirk Trainor or that the trailer was sold on consignment by Capitol Corvette for Mr. Trainor. William Gaulette and Chris Ducklow purchased the trailer at Capitol Corvette's business premises and they believed that Capitol Corvette owned this vehicle and had the authority to sell it. Capitol Corvette did not inform Mr. Gaulette and Mr. Ducklow that the trailer was owned by Mr. Trainor. Rather David Larson told them the trailer was traded in on another trailer.
7. Neither William Gaulette nor Chris Ducklow has ever worked for an automobile dealer, nor have they worked in the automotive industry.
8. William Gaulette and Chris Ducklow purchased the subject motor vehicle in good faith and without knowledge that the sale was in violation of the ownership rights of Kirk Trainor. William Gaulette and Chris Ducklow are buyers in the ordinary course of business of the subject vehicle

Discussion

William Gaulette and Chris Ducklow have applied to the DMV for a certificate of title and registration for the subject trailer. Pursuant to secs. 342.11(1) and 342.12(2), Stats., the DMV refused to issue a title or registration to them for the trailer.¹

The Wisconsin motor vehicle code is silent with respect to the issuance of a title and registration in this situation. The transaction is regulated by the Uniform Commercial Code. Pursuant to sec. 402.403(2), Stats., "[a]ny entrusting of possession of goods to a merchant who deals in goods of that kind gives the merchant power to transfer all rights of the entruster to a buyer in ordinary course of business." In the instant matter, Kirk Trainor entrusted the trailer to Capitol Corvette for the purpose of selling it. Accordingly, Capitol Corvette had the power to transfer ownership of the trailer to a buyer.

Capitol Corvette has authority to transfer interest in the vehicle even if the consignor has retained title. In general, the interests of a consignor are not protected unless the consignor complies with one of the three alternatives set forth at sec. 402.326(3), Stats., relating to informing prospective creditors of the consignee of a

¹ Sec. 342.11(1), Stats., provides in relevant part.

The department shall refuse issuance of a certificate of title for any of the following reasons

- (1) The department has reasonable grounds to believe that
 - (a) The person alleged to be the owner of the vehicle is not the owner
 - (b) The application contains a false or fraudulent statement.

Sec. 342.12(2), Stats., provides in relevant part.

- (2) If the department is not satisfied as to the ownership of the vehicle or that there are no undisclosed security interests in it, the department, subject to sub. (3), shall either
 - (a) Withhold issuance of a certificate of title until the applicant presents documents reasonable sufficient to satisfy the department as to the applicant's ownership of the vehicle and that there are no undisclosed security interests in it, or
 - (b) Issue a distinctive certificate of title pursuant to sec. 342.10(4) or 342.283

potential security interest.² Kirk Trainor has not alleged that he complied with the provisions of sec. 402.326(3), Stats.

William Gaulette and Chris Ducklow purchased the trailer from Capitol Corvette. They were unaware that Capitol Corvette was selling the trailer on consignment. Even if William Gaulette and Chris Ducklow had been aware that the vehicle was being sold on consignment, there is no evidence that they should have suspected that Capitol Corvette did not intend to use the proceeds of this sale to pay the consignor or the sale was fraudulent in any manner.

William Gaulette and Chris Ducklow have the burden to prove that they are buyers in the ordinary course of business. The phrase "buyer in the ordinary course of business" is defined at sec. 402.201(9), Stats. Sec. 401.201(9), Stats., provides in relevant part that: "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to the person is in violation of the ownership rights or security interest of a 3rd party in the goods buys in ordinary course from a person in the business of selling goods of that kind . . .'. Based on the evidence in the record, it appears that William Gaulette and Chris Ducklow are good faith purchasers who purchased the trailer without knowledge that the sale was in violation of the ownership rights of Kirk Trainor. William Gaulette and Chris Ducklow purchased the vehicle from Capitol Corvette, a licensed motor vehicle dealer, which at the time of the purchase was a company in the business of selling used vehicles.

Conclusions of Law

The Administrator concludes:

1. Pursuant to sec. 402.403(2), Stats., Capitol Corvette had the power to transfer all of Kirk Trainor's ownership rights in the subject trailer to a buyer in the ordinary course of business.

² Sec. 402.326(3), Stats., provides in relevant part.

(3) Where goods are delivered to a person for sale and such person maintains a place of business at which the person deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. This subsection is applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum." However, this subsection is not applicable if the person making delivery

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by that person's creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of ch 409

2. William Gaulette and Chris Ducklow are buyers in the ordinary course of business of the subject trailer. Pursuant to sec. 402.403, Stats., William Gaulette and Chris Ducklow have acquired title and ownership of the trailer.
3. Pursuant to secs. 346.26 and 227.43(1)(bg), Stats., the Division of Hearings and Appeals has the authority to issue the following order.

Order

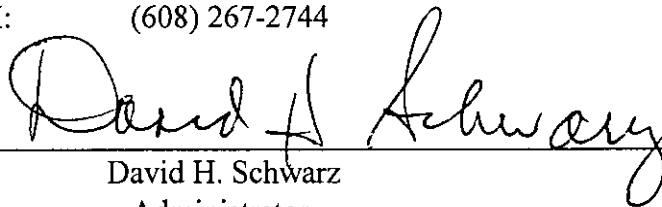
The Administrator orders:

The Division of Motor Vehicles of the Department of Transportation shall issue a Wisconsin title and registration to William Gaulette and Chris Ducklow for the 1992 Timber Wolf Trailer, VIN 48FCG302XN1000296, which is the subject of this matter.

Dated at Madison, Wisconsin on March 23, 1998.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____


David H. Schwarz
Administrator